

Ekwan E. Rhow - State Bar No. 174604  
erhow@birdmarella.com  
Grace W. Kang - State Bar No. 271260  
gkang@birdmarella.com  
A. Howard Matz - State Bar No. 55892  
hmatz@birdmarella.com  
BIRD, MARELLA, BOXER,  
WOLPERT, NESSIM,  
DROOKS, LINCENBERG &  
RHOW, P.C.  
1875 Century Park East, 23rd Floor  
Los Angeles, California 90067-2561  
Telephone: (310) 201-2100  
Facsimile: (310) 201-2110

Nicholas Groombridge (*pro hac vice*)  
ngroombridge@paulweiss.com  
Jenny C. Wu (*pro hac vice*)  
jcwu@paulweiss.com  
PAUL, WEISS, RIFKIND,  
WHARTON & GARRISON LLP  
1285 Avenue of the Americas  
New York, New York 10019-6064  
Telephone: (212) 373-3000  
Facsimile: (212) 757-3990

David J. Ball, Jr. (*pro hac vice*)  
dball@paulweiss.com  
J. Steven Baughman (*pro hac vice*)  
sbaughman@paulweiss.com  
PAUL, WEISS, RIFKIND,  
WHARTON & GARRISON LLP  
2001 K Street, NW  
Washington, DC 20006-1047  
Telephone: (202) 223-7300  
Facsimile: (202) 223-7420

Attorneys for Defendant Twitter, Inc.

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

BLACKBERRY LIMITED, a Canadian  
corporation,

Plaintiff,

vs.

TWITTER, INC., a Delaware  
corporation,

Defendant.

CASE NO. 2:19-cv-01444-GW (KSx)

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
DEFENDANT TWITTER, INC.'S  
MOTION TO DISMISS PURSUANT  
TO FED. R. CIV. P. 12(B)(6)**

Date: August 29, 2019  
Time: 8:30 a.m.  
Crtrm.: 9D

Assigned to Hon. George H. Wu

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## **INTRODUCTION**

Each of BlackBerry's seven asserted patents is patent-ineligible under 35 U.S.C. § 101. Four of these patents, which the Court has not previously considered, are all directed to age-old, fundamental concepts of communication. U.S. Patent No. 8,286,089 (the "'089 Patent") is directed to flagging new messages until the inbox has been checked. U.S. Patent No. 8,572,182 (the "'182 Patent") is directed to inferring the status of messages in a conversation. U.S. Patent No. 9,021,059 (the "'059 Patent") is directed to communicating the availability of information through a networked hub. U.S. Patent No. 8,825,777 (the "'777 Patent") is directed to screening repetitive content when it becomes excessive. Although this Court previously declined, without prejudice, to dismiss claims based on the other three patents, those are also all directed to mere abstract ideas, as the intrinsic evidence and additional Federal Circuit guidance establish. For example, just a few months ago, the Federal Circuit made clear that claims directed to displaying information, even as a new arrangement, are patent-ineligible when they merely improve how a user processes information. Such claims "do not improve the functioning of the computer, make it operate more efficiently, or solve any technological problem." *Trading Techs. Int'l, Inc. v. IBG LLC*, 921 F.3d 1084, 1093 (Fed. Cir. 2019). U.S. Patent No. 8,296,351 (the "'351 Patent") and U.S. Patent No. 8,676,929 (the "'929 Patent") are directed to the fundamental practice of assembling targeted advertising. U.S. Patent No. 9,349,120 (the "'120 Patent") is directed to sorting, analyzing, and presenting new messages. Twitter respectfully submits that this Court should review these patents again in light of *Trading Technologies* and other precedent. All asserted patents are directed towards general communications concepts, and the First Amended Complaint should be dismissed.

## **LEGAL STANDARD**

Dismissal of a patent complaint at the pleadings stage is appropriate where all of the asserted patent claims are patent-ineligible under 35 U.S.C. § 101. *See, e.g.,*

1 *Prod. Ass’n Techs. LLC v. Clique Media Grp.*, No. CV 17-05463-GW(PJWx), 2017  
 2 WL 5664986, at \*9–\*10 (C.D. Cal. Oct. 12, 2017) (dismissing complaint where the  
 3 only specifically identified patent claim in the complaint was found patent-  
 4 ineligible), *aff’d* 738 F. App’x 1021 (Fed. Cir. 2018). A patent is invalid if it claims  
 5 patent-ineligible subject matter, such as laws of nature, natural phenomena, or abstract  
 6 ideas. *Diamond v. Diehr*, 450 U.S. 175, 185 (1981). In the computer context, subject-  
 7 matter eligibility is evaluated under the two-step framework set forth in *Alice Corp.*  
 8 *Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 217–18 (2014).

9 **Step one** of *Alice* analyzes whether the “‘focus’ of the claims, their ‘character  
 10 as a whole,’” is directed to an abstract idea. *Elec. Power Grp., LLC v. Alstom S.A.*,  
 11 830 F.3d 1350, 1353 (Fed. Cir. 2016) (internal citations omitted). And, as the Federal  
 12 Circuit recently clarified, the “directed to” inquiry may also involve looking to the  
 13 specification to understand “the problem facing the inventor” and, ultimately, what  
 14 the patent describes as the invention. *ChargePoint, Inc. v. SemaConnect, Inc.*, 920  
 15 F.3d 759, 767 (Fed. Cir. 2019). For example, it is indicative that a claim is directed  
 16 to an abstract idea when the specification does not suggest an “improve[ment] from a  
 17 technical perspective,” or that the claimed invention results in something “operat[ing]  
 18 differently than it otherwise could,” or “that the invention involved overcoming some  
 19 sort of technical difficulty.” *Id.* at 768.

20 Courts have recognized various forms of abstract ideas, including: (1) activity  
 21 that can be performed mentally or with pen and paper; (2) methods of organizing  
 22 human activity, including the use of rules to take certain actions; (3) long-prevalent  
 23 or fundamental practices; and (4) methods for organizing data, such as collecting,  
 24 analyzing, and displaying data. *See, e.g., Alice*, 573 U.S. at 219; *Intellectual Ventures*  
 25 *v. Capital One Bank (USA)*, 792 F.3d 1363, 1369 (Fed. Cir. 2015); *CyberSource*  
 26 *Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1371–72 (Fed. Cir. 2011). A patent  
 27 directed to an abstract idea does not become patentable simply by claiming the  
 28 abstract idea within a narrow technological context or use case. *BSG Tech LLC v.*





1 messages have been received, and turning off that indicator after the user has viewed  
 2 the inbox (or what the claims call a “message inventory display screen”). Claim 1,  
 3 the only asserted claim identified in BlackBerry’s Complaint, is recited below with  
 4 key portions bolded:

5 1. A method of representing new electronic messages on a  
 6 communication device having a display, the method comprising:

7 **receiving a new electronic message;**

8 setting a new message flag to indicate receipt of the new electronic  
 9 message;

10 **representing, on a home screen displayed on the display, a new  
 11 message indicator** when the new message flag is set;

12 receiving an invocation to **switch the home screen displayed on the  
 13 display to a message inventory display screen** for viewing a listing  
 14 including a plurality of electronic messages including the new  
 15 electronic message, the message inventory display screen displaying  
 16 a preview, for each listed electronic message, of either a subject line  
 17 or of a portion of contents of the electronic message, the contents of  
 18 an electronic message being accessible upon receipt of a request to  
 19 open an electronic message from the list of messages;

20 **unsetting the new message flag in response to the invocation to  
 21 switch the home screen displayed on the display to the message  
 22 inventory display screen,** the unsetting of the flag occurring **without  
 23 having received a request to open the new electronic message;** and

24 receiving an invocation to switch the message inventory display screen  
 25 to the home screen, wherein **the new message indicator represented  
 26 on the home screen is not displayed** as a result of the unsetting of  
 27 the new message flag.

28 The patent explains that switching between a home screen and other types of  
 display screens was well-known. ’089 Patent, 7:30–32 (“Display screens may be  
 invoked for display from the home screen or from other application screens as is well  
 known”). And that inboxes that preview messages in list form were well-known too.  
*Id.* at 1:39–41 (“Messages are typically presented in a message list showing limited  
 information pertaining to each message . . . .”). Nor does the patent purport to have  
 invented home screen indicators. *Id.* at 1:48–57. Rather, the supposed invention is a

1 way for users “to be informed that they have new messages as distinct from unopened  
 2 messages on the device”—that is, setting a new message indicator based on whether  
 3 the user knows about, as opposed to opens, a new message. *Id.* By its own terms, it  
 4 solves no technical problem.

5 **A. The ’089 Patent Claims Are Directed to the Abstract Idea of Flagging**  
 6 **New Messages Until an Inbox Has Been Checked**

7 Claim 1 is directed to nothing more than the abstract idea of flagging new  
 8 messages until an inbox has been checked. This is a mailbox management practice  
 9 that does not arise from a technological problem or offer a technological  
 10 improvement—it simply implements the familiar curbside mailbox flag in an  
 11 electronic mailbox setting. The curbside mailbox has on its side a flag that indicates  
 12 that new mail is present when the flag is raised. This corresponds to (and is quite  
 13 literally) a “new message flag” that sets off a “new message indicator” as claimed by  
 14 the patent. The mailbox flag is visible from the outside of the mailbox, much like the  
 15 claimed “new message indicator” is visible on a home screen. After one checks the  
 16 inside of the mailbox, the new mail can be previewed by scanning the envelopes, and  
 17 the mailbox flag can be reset to an unraised position, even if one has not actually  
 18 opened any mail. This is no different from what claim 1 teaches—“unsetting the new  
 19 message flag” such that the new message indicator is no longer displayed after the  
 20 user has switched from the home screen to the inbox without opening any of the new  
 21 mail. Indeed, the patent itself explains that switching to the inbox is a “proxy for the  
 22 user’s awareness of the new messages,” confirming that the patent does not claim a  
 23 technological improvement. *Id.* at 7:41–43.

24 This same fundamental practice of mailbox management has been applied in  
 25 other settings as well, such as digital answering machines that provide a new message  
 26 indicator in the form of a blinking light or beeping sound until the user has checked  
 27 the new messages. These machines turn off the new message indicator, even if all the  
 28 user did was to retrieve information about the number of new messages, who sent the

1 messages, and the time the messages were sent, without actually listening to the  
2 messages. So too here.

### 3 **B. The '089 Patent Claims Add No Inventive Concept**

4 None of the elements of claim 1, whether individually or collectively, add an  
5 “inventive concept” that would transform the abstract idea here into a patent-eligible  
6 invention. The claim recites the use of a “communication device having a display,”  
7 which is wholly conventional and well-known, encompassing any device that can  
8 display messages on a screen, whether it be a desktop computer, mobile device, or  
9 digital answering machine. The acts of receiving a new message, setting and unsetting  
10 indicators in response to certain events, switching between a home screen and a  
11 message display screen, and displaying a list of messages with their contents  
12 previewed, are all routine acts of such devices. *See* '089 Patent at 1:34–51, 7:30–32;  
13 *Symantec*, 838 F.3d at 1316–20.

14 Nor is there anything unconventional about unsetting a new message flag in  
15 response to a user switching from a home screen to the inbox instead of in response  
16 to a user opening mail. At most, the act of removing a new message indicator after a  
17 user has opened an inbox, even without opening individual mail, is just an application  
18 of a rule and does not transform the claim into something “significantly more.” But  
19 the Federal Circuit has held that implementing an abstract idea with a rule such as this  
20 remains an unpatentable abstract idea, particularly where the rule is not tied to a  
21 technological improvement. *FairWarning*, 839 F.3d at 1094–95 (finding no inventive  
22 concept where claimed rules asked “the same questions (though perhaps phrased with  
23 different words) that humans in analogous situations . . . have asked for decades, if  
24 not centuries” and did not “improve[] existing technological process[es]”);  
25 *Facebook/Snap*, 2018 WL 4847053, at \*8–\*10 (finding abstract a claim that applied  
26 a specific rule to time stamping where “there is nothing that ties the rule to a  
27 technological improvement”). And there is certainly nothing unconventional about  
28 taking action on new mail without opening that mail. As the Federal Circuit has

1 already confirmed, “it was long-prevalent practice for people receiving paper mail to  
 2 look at an envelope and discard certain letters, without opening them.” *Symantec*,  
 3 838 F.3d at 1314. Limiting these concepts to electronic messages does not make them  
 4 inventive.

## 5 **II. The ’182 Patent**

6 The ’182 Patent describes a way of reducing the amount of back-and-forth in  
 7 an instant messaging conversation. Specifically, instead of receiving confirmation  
 8 about the status of each message sent in a conversation (*e.g.*, whether the message has  
 9 been delivered or read by the recipient), the sender of the messages just receives a  
 10 confirmation about the status of one of those messages—typically the last—and infers  
 11 the status of other messages that were sent before that one. BlackBerry specifically  
 12 asserts Claims 1 and 4. Compl. ¶ 178. Claim 1, which is merely Claim 4 drafted as  
 13 a method claim, is recited below with key portions bolded:<sup>1</sup>

14 1. A method in a first communication device for **reducing**  
 15 **communications in an instant messaging conversation** between  
 16 said first device and a second communication device, the method  
 comprising:

17 **sending to said second device, a plurality of instant messages** of  
 18 said conversation;

19 **receiving from said second device, after sending said plurality of**  
 20 **instant messages, at least a notification of the status of only a**  
 21 **particular one of said plurality of instant messages** sent by said  
 22 first device to said second device without having previously  
 23 received a notification of the status of any of said plurality of  
 24 instant messages sent prior to said particular one of said plurality  
 of instant messages; and

---

25 <sup>1</sup> The § 101 analysis may be performed using a representative claim that is  
 26 “substantially similar and linked to the same abstract idea,” *Content Extraction &*  
 27 *Transmission LLC v. Wells Fargo Bank*, 776 F.3d 1343, 1348 (Fed. Cir. 2014); *see*  
 28 *Alice*, 573 U.S. at 226–27 (holding the system and computer-readable medium  
 claims to be no different in substance from the method claims for the § 101  
 analysis).

1 in response to receipt of said notification, a processor **updating an**  
 2 **internal record** to reflect said status for said particular one of said  
 3 plurality of instant messages and **to reflect an inferred status for**  
 4 **all of said plurality of instant messages of said conversation**  
 5 **sent prior to said particular one of said plurality of instant**  
 6 **messages.**

7 The specification defines an “instant message” (or “IM”) exactly as it is  
 8 commonly understood—a short text message sent from one device to another,  
 9 generally displayed as “part of a conversation.” ’182 Patent at 1:6–9. The patent does  
 10 not purport to have invented IMs or notifications for IMs, stating that IM systems  
 11 were known to provide users with a “notification of the status” of a message. *Id.* at  
 12 1:22–23. These known IM systems “used notifications to provide users with ‘clues’”  
 13 about the status of particular messages, such as whether a message was delivered to  
 14 or read by the recipient. *Id.* at 1:22–29.

15 The patent purports to use these “clues” to “reduc[e] the communications in an  
 16 IM conversation” by “sending to the second device a single IM communication that  
 17 confirms the most recent of events.” *Id.* at 2:12–16. The specification further explains  
 18 that “[i]n some cases, [the status of] an earlier event can be inferred from the single  
 19 IM communication.” *Id.* at 2:27–28. For example, upon notification that a particular  
 20 IM has been read, the device that sent the IM “may infer that all previous instant  
 21 messages in the conversation that were sent” have also been received and read. *Id.* at  
 22 2:65–3:3. The sending device then “update[s] its internal record to reflect that the  
 23 particular IM and all messages of the conversation sent prior to the particular IM were  
 24 delivered and read.” *Id.* at 3:3–6.

#### 25 **A. The ’182 Patent Claims Are Directed to the Abstract Idea of Inferring** 26 **the Status of Messages in a Conversation**

27 Claims 1 and 4 of the ’182 Patent are directed to nothing more than the abstract  
 28 idea of inferring the status of messages in a conversation, such as whether the  
 messages have been delivered or read. The claimed method seeks to reduce the  
 amount of back-and-forth in a conversation by relying on a single response in a



1 conversation to infer the delivered or read status (or some other status of interest) of  
 2 earlier communications in the conversation. But such use of inferences is a basic  
 3 aspect of human conversation, one that merely involves “analyzing information by  
 4 steps people go through in their minds.” *Elec. Power*, 830 F.3d at 1354. As an  
 5 example, a father might convey a list of items to his son to pick up from the grocery  
 6 store, but rather than repeatedly (and tediously) respond “I got it” to each item, the  
 7 son can just say “I got it” in response to the last item his father lists. The father can  
 8 then take mental note that the son has heard the entire list. This is not a technological  
 9 solution to address a technological problem.

10 The purely result-based, functional language to describe the purported  
 11 invention further evidences its non-technological nature. “Sending” and “receiving”  
 12 messages or notifications constitute the broken-down steps of a two-way  
 13 conversation. “Updating an internal record” constitutes the act of keeping track of  
 14 the conversation. These are all generic processes, not just in the instant messaging  
 15 context, but also in the human context. *See Two-Way Media Ltd. v. Comcast Cable*  
 16 *Commc’ns*, 874 F.3d 1329, 1337 (Fed. Cir. 2017) (finding a claim reciting “a method  
 17 for transmitting message packets over a communications network” to be directed to  
 18 the abstract idea of “(1) sending information, (2) directing the sent information, (3)  
 19 monitoring receipt of the sent information, and (4) accumulating records about receipt  
 20 of the sent information” and explaining that these are all examples of result-based  
 21 functional language). Indeed, it is telling that other than the “first communication  
 22 device,” “second communication device,” and arguably “processor,” the claims do  
 23 not cite to any hardware. At best, the claims recite an existing form of efficient  
 24 communication, performed via generic computing technology.

## 25 **B. The ’182 Patent Claims Add No Inventive Concept**

26 Nor do Claims 1 and 4 offer any details that could transform the claimed  
 27 abstract idea into something “significantly more.” *Alice*, 573 U.S. at 218. The claims  
 28 only recite routine, conventional activities such as sending messages, receiving

1 notifications, and updating internal records. In addition, each limitation is recited so  
 2 generally that they are themselves abstract elements, as discussed above, and thus do  
 3 not supply an inventive concept. *See SAP Am.*, 898 F.3d at 1169–70; *Two-Way*  
 4 *Media*, 874 F.3d at 1337 (sending, receiving, and making a record are abstract ideas).  
 5 In fact, the claims do not even recite an actual step of “inferring” the status of a  
 6 message. The claims only recite “updating an internal record” to “reflect an inferred  
 7 status,” which is exactly the type of result-based functional language that is indicative  
 8 of a claim directed to an abstract idea. ’182 Patent at 9:48–51; *Two-Way Media*, 874  
 9 F.3d at 1337 (explaining that “accumulating records about receipt of the sent  
 10 information” is an example of result-based functional language). The claims point to  
 11 no technological, let alone unconventional, details for carrying out the required  
 12 steps—none of the steps, alone or together, suffice to transform the abstract idea into  
 13 patent-eligible subject matter.

### 14 **III. The ’059 Patent**

15 The ’059 Patent generally relates to a method of providing notice of available  
 16 informational content from one mobile device to another through a networked hub  
 17 server. BlackBerry specifically asserts Claims 1, 11, and 16. Compl. ¶ 124. Claim  
 18 1, which is a method claim that recites the acts of the claimed apparatuses of Claims  
 19 11 and 16, is representative. It is recited below with key portions bolded:

20 1. A method comprising:

21 making informational content, selected in a first mobile wireless device,  
 22 available to a second mobile wireless device using a data hub server;

23 **receiving a representation of the informational content in the data**  
 24 **hub server in a directed transmission from a first server to the**  
 25 **data hub server**, the first mobile wireless device being a client of the  
 26 first server; and

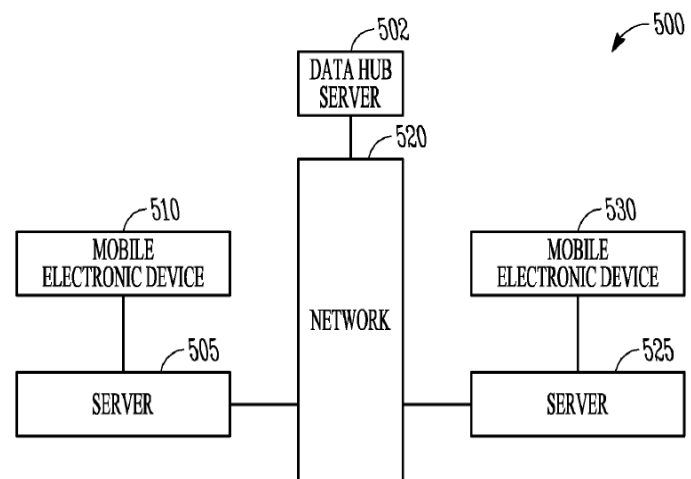
27 **transmitting notification of the informational content being**  
 28 **available to the second mobile wireless device using a directed**  
**transmission from the data hub server to a second server**, the  
 second mobile wireless device being a client of the second server, the  
 first server being separate from the second server.



BlackBerry did not invent the computer network or network servers. It also cannot claim to have invented a new type of network server for this patent. As the specification explains, a “server” is a device that can communicate with the Internet and other servers using traditional and generic computer components, such as processors, memory, and a network interface. *Id.* at 19:36–58, Fig. 7; *see also id.* at 3:40–60, 9:10–27; *Credit Acceptance Corp. v. Westlake Servs.*, 859 F.3d 1044, 1056 (Fed. Cir. 2017) (noting a database, user terminal, and server are conventional and generic). Although the patent also refers to transmitting information through a “data hub server,” this server is just a “go-between server.” ’059 Patent at 19:53–58, 20:4–9. The specification describes the “data hub server” generically like any other server, as a device with processors, memory, and a network interface that can communicate with the Internet and other servers. *Id.* at 18:29–19:35; *see also id.* at 15:16–18 (noting that the “data hub server” can simply be “a server” that is “external to the wireless servers” (the first and second servers)).

**A. The ’059 Patent Claims Are Directed to the Abstract Idea of Communicating the Availability of Content Through a Networked Hub**

The identified claims of the ’059 Patent are directed to the abstract idea of communicating the availability of content through a networked hub. As depicted in Figure 5, the claims essentially boil down to a first mobile wireless device transmitting information (or a representation of that information) to a “data hub server” through a first server, then the “data hub server”



**FIG. 5**

1 transmitting a notification of the availability of that information through a second  
2 server to a second mobile wireless device. Indeed, the acts of transmitting and  
3 receiving information are in and of themselves abstract ideas. *See, e.g., Two-Way*  
4 *Media*, 874 F.3d at 1337 (sending and directing information over a network are  
5 abstract ideas).

6 Although the claims refer to mobile wireless devices and servers, the claims  
7 are not directed to a technological solution specific to a technological problem. This  
8 is apparent from the real-life brick-and-mortar implementation of this idea using the  
9 postal system. When one person wants to send a large package to another, the first  
10 person hands the package to a postal carrier who then delivers the package to the post  
11 office (much like transmitting information from a first device through a first server to  
12 the data hub server), then the post office sends another postal carrier to provide a  
13 paper notice to the second person that the package is available for pick-up (much like  
14 sending a notification of the availability of the information from the data hub server  
15 through a second server to the second device).

16 Even as applied in the realm of computers, however, the Federal Circuit has  
17 already explained in *ChargePoint*, just earlier this year, that communication over a  
18 network for interacting with a device is an abstract concept. *ChargePoint*, 920 F.3d  
19 at 768. In particular, *ChargePoint* makes clear that “communicating requests to a  
20 remote server” and “receiving communications from that server” are abstract ideas.  
21 *Id.* at 766. The ’059 claims are directed to exactly these ideas, where a first device  
22 communicates with networked servers to transmit information and a second device  
23 receives communications about the availability of that information from the  
24 networked servers, all using standard networking components and protocols. *See,*  
25 *e.g.,* ’059 Patent at 5:10–13, 14:24–27 (“interconnected computer networks that  
26 interchange data using a standardized protocol[, like the] Internet”); *id.* at 19:3–13,  
27 20:26–33 (describing generic servers that operate on well-known networks such as  
28 the Internet); *see also id.* at 3:61–28 (describing generic instrumentalities); *id.* at 6:50–

52 (noting generically that the wireless server “may be realized as software integrated into a machine”); *id.* at 10:47–49 (noting generically that a local home PC can be configured as a wireless server).

#### **B. The ’059 Patent Claims Add No Inventive Concept**

The claims do not present any saving inventive concept because they merely implement the abstract idea by using generic computer networking components (*i.e.*, mobile wireless devices and servers) that are performing generic computer networking functionalities (*i.e.*, making information available, receiving information, and transmitting information). The components in combination are a conventional networking unit, as discussed above. “That a computer receives and sends the information over a network—with no further specification—is not even arguably inventive.” *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014); *see also Credit Acceptance*, 859 F.3d at 1056 (noting that databases, user terminals, and servers are conventional and generic).

The fact that the claims use the term “data hub server” to refer to the claimed intermediary server, as opposed to just the term “server,” does not change the analysis. As discussed above, the description of the data hub server in the specification provides no suggestion that the data hub server is “anything other than off-the-shelf, conventional computer [and] network technology.” *Elec. Power*, 830 F.3d at 1355.

Likewise, the fact that the claims specify that the data hub server receives an abstract “representation of the informational content” and transmits a “notification of the informational content” does not make the server functionality any less routine and conventional. The specification does not at all suggest that conveying either a representation of or a notification about information content is somehow non-routine or unconventional. And, as the Federal Circuit has held, the claims are not made any less abstract just because the claims specify the particular types of information to be communicated (here, a “representation of the informational content” and a “notification of the informational content”). *See SAP Am.*, 898 F.3d at 1168

(collecting and analyzing information is abstract, even when limited to a particular type of information). Rather, providing notifications and using representations (e.g., a shorthand) for information are themselves abstract concepts. *See FairWarning*, 839 F.3d at 1094 (notification); *OpenTV, Inc. v. Apple, Inc.*, 14-cv-01622-HSG, 2015 WL 1535328, at \*3–\*4 (N.D. Cal. Apr. 6, 2015) (shorthand). And notably, the specification discloses that the “representation of the informational content” is generic enough to cover the informational content itself. ’059 Patent at 26:33–45, 27:41–54. In any event, merely generating, sending, or transmitting a notification are all well-worn abstract ideas in and of themselves, and therefore do not connote subject matter eligibility. *See FairWarning*, 839 F.3d at 1094–95 (notifying is abstract); *SAP Am.*, 898 F.3d at 1169–70 (noting elements “are themselves abstract”); *Two-Way Media*, 874 F.3d at 1337 (sending, directing, and monitoring information are abstract ideas); *see also* ’059 Patent at 17:46–55, 23:19–25, 23:67–24:4 (noting generically that a notification can be generated, sent, or transmitted). Accordingly, none of the claim elements of the ’059 Patent, alone or in combination, provides an inventive concept.

#### IV. The ’777 Patent

The ’777 Patent purports to combat the problem of “unrestrained dissemination” of “undesirable” communications by “throttling” or delaying the delivery of that communication. *See* ’777 Patent at 1:27-58, 5:9-21, 5:61-64. Yet none of BlackBerry’s identified claims actually offers a technological solution to this decidedly non-technological problem. Rather, the claims simply posit that certain unspecified thresholds can be used to identify *some category of repetitive* content—not necessarily just undesirable content—for which notifications should be adjusted.

Claim 1, which is representative of specifically asserted Claims 1, 10, and 19, is presented below with key portions bolded:

1. A method of managing electronic communications within a social group of a social network, comprising:  
**monitoring messages** communicated within the social group;

1 **determining content shared by a number of messages** communicated  
 2 within the social group, wherein the number of messages sharing the  
 determined content **satisfies at least one of:**

3 a growth rate of the number of messages **meets or exceeds a growth**  
 4 **rate threshold;** and

5 the number of messages **meets or exceeds a message quantity**  
 6 **threshold;**

7 **determining whether one or more new messages** to be communicated  
 8 to one or more members of the social group **comprises content**  
 9 **similar to the determined content;** and

10 **selectively adjusting notification of the one or more new messages** to  
 11 the one or more members of the social group in response to  
 12 determining that the one or more new messages to be communicated  
 13 to the one or more members of the social group comprises content  
 14 similar to the determined content.

#### 15 **A. The '777 Patent Claims Are Directed to the Abstract Idea of** 16 **Screening Repetitive Content When It Becomes Excessive**

17 Despite what the specification might contend is the purported solution to the  
 18 problem it posits, the claims themselves are not so focused. Instead, they are directed  
 19 only to the abstract idea of screening repetitive content when it becomes excessive.  
 20 This is hardly a technological solution to a technological problem.

21 The Federal Circuit's decision in *Symantec* is instructive. In that case, the  
 22 claims at issue involved "methods of routing e-mail messages based on specified  
 23 criteria (*i.e.*, rules)." 838 F.3d at 1317. More specifically, the claims recited applying  
 24 a set of business rules for "controlling the delivery of an e-mail message as a function  
 25 of an attribute of the e-mail message." *Id.* at 1318. The Federal Circuit likened the  
 26 claims in that case to the application of business rules by a corporate mailroom to  
 27 define what action to take on a particular correspondence, such as deferring delivery  
 or gating a message for further review. *Id.* Although the claims included additional  
 limitations, such as combining the e-mail with a "rule history" of all the rules applied  
 to that e-mail, the Federal Circuit nonetheless determined that the claims were merely  
 directed to a "conventional business practice" of "screening messages by a corporate  
 organization." *Id.*

28 That same reasoning applies here. Similar to the *Symantec* claims, the claims

1 at issue recite methods of “selectively adjusting notification” for a new message,  
2 including by delaying delivery, based on whether the message meets one of two  
3 specified criteria. And similar to the *Symantec* claims, the claimed criteria are readily  
4 applied to adjust notifications for new messages in non-technological settings. For  
5 example, when a city council member’s office is suddenly deluged with calls relating  
6 to a newly controversial issue, her staffers can note the surge in activity and report the  
7 calls on an aggregated and delayed basis instead of immediately relaying each  
8 message. There are numerous other examples as well: solicitations for alumni  
9 donations can be sequestered to certain times of the year instead of all throughout the  
10 year; spam email can be reserved for delivery at the end of the day in a single digest  
11 instead of being instantly delivered to the recipient; trial exhibits with similar content  
12 can be moved into evidence en masse at the end of the court day instead of one by  
13 one as each exhibit is introduced to the jury.

14 The abstract nature of these patent claims is further highlighted by the fact that  
15 the claim elements are “so result-based that they amount[] to patenting the patent-  
16 ineligible concept itself.” *Interval Licensing LLC v. AOL, Inc.*, 896 F.3d 1335, 1344  
17 (Fed. Cir. 2018) (finding patent-ineligible a claim with nine “generic sets of  
18 instructions” that distilled down to two results-based functions). Tellingly, the claims  
19 do not specify how to determine when a message or content has met the claimed  
20 criteria. At best, the specification invokes the use of “natural language parsing  
21 capabilities” already known to those of skill in the art, but the claims do not recite any  
22 advancement in parsing capabilities or their application. *See, e.g.*, ’777 Patent at 5:50-  
23 53, 9:4-8. The claims also do not specify how to selectively adjust notifications for a  
24 new message based on that repetitive content. Of particular note, the claims do not  
25 even specify *what* or *how much* adjustment to make. *See Facebook/Snap*, 2018 WL  
26 4847053 at \*6 (finding ineligible a patent claim directed to time stamping where the  
27 language of the challenged claim is “broad enough that it would cover embodiments  
28 that may not actually improve when timestamp information is displayed”).



1 The § 101 inquiry must be focused on what is actually claimed. *See*  
 2 *ChargePoint*, 920 F.3d at 768 (when analyzing subject matter eligibility, “the  
 3 specification cannot be used to import details from the specification if those details  
 4 are not claimed”). Here, at best, the claims are a list of functions without boundaries.  
 5 That cannot be patent-eligible. *See Interval Licensing*, 896 F.3d at 1343 (stressing  
 6 that “a claimed invention must embody a concrete solution to a problem having ‘the  
 7 specificity required to transform a claim from one claiming only a result to one  
 8 claiming a way of achieving it.’”) (internal citations omitted); *see also SAP*, 890 F.3d  
 9 at 1021-23 (collecting cases).

### 10 **B. The ’777 Patent Claims Add No Inventive Concept**

11 Turning to step two of *Alice*, the claims fail once again—the claim limitations,  
 12 both alone and in combination, do not contain any saving inventive concept. To start,  
 13 but for the preamble reciting the management of “electronic communications,” no  
 14 part of Claim 1 recites anything that is arguably technological. As explained above,  
 15 the limitations only describe results-based functions. Consequently, these limitations  
 16 fail to pass muster because they amount to “patenting the patent-ineligible concept  
 17 itself.” *Interval Licensing*, 896 F.3d at 1344. That the limitations do not recite  
 18 “assertedly inventive technology for improving computers as tools” only further  
 19 drives home the point. *Id.*; *see also Elec. Power Grp.*, 830 F.3d at 1354 (finding  
 20 claims ineligible in part because no “particular tool” was identified).

21 Claims 10 and 19 fare no better, merely grafting standard computer components  
 22 onto the patent-ineligible method of Claim 1. But that is not enough. *In re TLI*  
 23 *Commc’ns LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016) (holding that, despite  
 24 reciting “concrete, tangible components,” the claims were directed to an abstract idea  
 25 where “the physical components merely provide[d] a generic environment in which  
 26 to carry out the abstract idea”). While Claim 10 recites the use of a “social network  
 27 server coupled to a communications network,” the specification makes clear that the  
 28 “social network server” is a conventional structure that can take the form of a

1 “Network Operations Center,” which “commonly are responsible for monitoring  
 2 communications network sand user activity in a social network for alarms or other  
 3 conditions that require attention.” ’777 Patent at 4:38-42, 8:23-26. The “social  
 4 network server” is thus just a server functioning in a social network, much like a mail  
 5 delivery truck is just a truck that delivers mail. Claim 19 similarly only adds the use  
 6 of an equally generic non-transitory computer-readable medium for causing a server  
 7 with a processor and associated memory to perform the claimed steps. *See*  
 8 *FairWarning*, 839 F.3d at 1096 (where method claims were patent-ineligible, similar  
 9 apparatus claims that added “nominal recitations of basic computer hardware, such as  
 10 ‘a non-transitory computer-readable medium with computer-executable instructions’  
 11 and a microprocessor” meant that the “conclusion of ineligibility is inescapable”)  
 12 (quoting *Accenture Glob. Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336,  
 13 1344 (Fed. Cir. 2013)). And, in any event, both claims make clear that it is simply a  
 14 generic processor coupled with a memory that actually performs the required steps.  
 15 *See* ’777 Patent at 13:23-26.

16 Those steps cannot be considered unconventional computer functions either.  
 17 This is confirmed by the fact that the specification fails to describe any technical  
 18 challenge or technical improvement to the way that the claimed computer components  
 19 operate. *ChargePoint*, 920 F.3d at 768; *TLI*, 823 F.3d at 612. Indeed, the  
 20 specification is conspicuously silent about any technological advances in the  
 21 architecture or function of the claimed processor and memory, explaining that “well-  
 22 known methods, procedures, and components have not been described in detail to  
 23 avoid obscuring the embodiments described.” ’777 Patent at 2:50-52. In effect, the  
 24 addition of these technological components does nothing more than simply state the  
 25 abstract idea while “adding the words ‘apply it.’” *Alice*, 573 U.S. at 221. The patent  
 26 claims are thus fatally abstract.

## 27 **V. The ’351 and ’929 Patents (the “Advertising Patents”)**

28 BlackBerry specifically asserts Claims 1 and 14 of the ’351 Patent, and Claims



1 1, 2, 9, and 10 of the '929 Patent.<sup>2</sup> Compl. ¶¶ 74, 90. As the Court is aware from  
 2 *Facebook/Snap*, the Advertising Patents share a common specification and generally  
 3 relate to a system and method for sorting, storing, selecting, assembling, and  
 4 delivering targeted advertising. The '351 Patent in particular covers assembling  
 5 different kinds of advertising; the '929 Patent covers assembling content with targeted  
 6 advertising using a meta tag.

7 Claim 1 of the '351 Patent is “exemplary” of the asserted claims from that  
 8 patent (Compl. ¶ 92), and is recited below with key parts bolded:

9 1. A system for pushing information to a mobile device, comprising:

10 a **proxy content server** that **receives information** over a computer  
 11 network from an information source **and stores the information to**  
 12 **one of a plurality of channels based on pre-defined information**  
 13 **categories**, wherein the plurality of channels comprise memory  
 locations included in at least one of the proxy content server or a  
 proxy content server database;

14 the proxy content server to **receive a feedback signal** over a wireless  
 15 network that indicates a position of the mobile device, and to **use the**  
 16 **feedback signal to select a channel for transmission of the**  
 17 **information** from the selected channel over the wireless network to  
 18 the mobile device, wherein the information comprises at least one of  
 19 static advertising information, dynamic advertising information,  
 20 default advertising information, or content information, and wherein  
 a combination of the static advertising information with one of the  
 dynamic or default advertising information comprises an  
 advertisement or an information bulletin.<sup>3</sup>

21 Claim 9 of the '929 Patent is “exemplary” of the asserted claims from that  
 22 patent (Compl. ¶ 76), recited as below with key parts bolded:

24 \_\_\_\_\_  
 25 <sup>2</sup> This Court has found Claim 2 of the '929 Patent to be invalid and thus this claim is  
 26 improperly asserted. *Facebook/Snap*, 18-cv-01844, Dkt. No. 157 at 17–19  
 27 [hereinafter “*Facebook/Snap* Claim Construction”]. Claim 10 is improperly  
 asserted for the same reasons.

28 <sup>3</sup> Claim 14 is identical to Claim 1 except that its triggers for selecting targeted  
 advertising are not limited to the recipient’s location.

1 9. A **server**, comprising:

2 a database organized into a plurality of memory location channels, each  
3 of the memory location channels **storing information of a same**  
4 **category as a pre-defined category of each of the respective**  
5 **memory location channels,**

6 wherein upon detection of

7 a triggering event comprising a **time triggering event**, determining the  
8 information relevant to the detected triggering event from among  
9 information stored in one of the plurality of memory location  
10 channels of the database, **when the information relevant to the**  
11 **detected triggering event comprises content information,**  
12 **inserting into the content information a meta tag for one or more**  
13 **advertisements to be displayed with the content information,** and  
14 transmitting the content information that includes the meta tag to a  
15 mobile device,

16 wherein the **meta tag identifies the one or more advertisements and**  
17 **advertisement display requirements,** and wherein the one or more  
18 **advertisements are selected based on the detected triggering**  
19 **event.**

## 20 **A. The Advertising Patent Claims Are Directed to the Abstract Idea of** 21 **Assembling Targeted Advertising**

22 These claims are not directed to a “specific ‘improved architecture’ provided  
23 by a ‘proxy content server,’” as BlackBerry previously argued to this Court.  
24 *Facebook/Snap*, 2018 WL 4847053 at \*6. This is apparent from the fact that the  
25 specification lacks any detail establishing a technical challenge, much less a technical  
26 improvement, in the way that the proxy content server gathers information, stores  
27 information, and selects information in response to a feedback signal. *ChargePoint*,  
28 920 F.3d at 768; *see also TLI*, 823 F.3d at 612 (holding patent claims ineligible where  
the specification “fail[ed] to provide any technical details for the tangible  
components, but instead predominately describe[d] the system and methods in purely  
functional terms”); *see id.* at 612–13 (concluding that “the focus of the patentee and  
of the claims was not on” improved hardware because the specification described the  
functionality of the hardware “in vague terms without any meaningful limitations”).

1 If anything, the specification shows the opposite. The specification describes  
2 the alleged invention as a “method of combining the information so that the mobile  
3 device user has a consistent and transparent experience of receiving both information  
4 content and advertising content.” ’351 Patent at 2:63–66. The specification also notes  
5 that “[o]ne possible goal of combining information with advertising content is to  
6 achieve a revenue source for the provider of the information so the mobile device user  
7 gets a reduce [sic] or free information service.” *Id.* at 3:16–19. Neither of these  
8 relates to an improved server architecture, however, regardless of whether you call it  
9 a “proxy content server” (as in the ’351 Patent) or just a “server” (as in the ’929  
10 Patent).

11 Thus, when properly viewed in the context of the specification, the focus of the  
12 asserted claims is on the fundamental business practice of assembling targeted  
13 advertising, whether by assembling different types of advertising information (’351  
14 Patent) or assembling placeholders for advertising with content information (’929  
15 Patent). But this is a patent-ineligible abstract idea. Targeted advertising, as the  
16 Federal Circuit has noted, has long been in use in a variety of non-electronic settings,  
17 including radio stations, newspapers, magazines, highway billboards, bulletin boards,  
18 and information bulletins. *See Capital One*, 792 F.3d at 1370 (stating that targeted  
19 television commercials have been around “for decades”). The Federal Circuit thus  
20 has held that “[t]ailoring information based on the time of day of viewing” or “based  
21 on the viewer’s location” is each “an abstract, overly broad concept long-practiced in  
22 our society.” *Id.* at 1369–70. That same principle applies to advertising tailored based  
23 on any trigger, not just time and location. *See, e.g., OpenTV, Inc. v. Netflix Inc.*, 76  
24 F. Supp. 3d 886, 893 (N.D. Cal. 2014) (“[T]he concept of gathering information about  
25 one’s intended market and attempting to customize the information then provided is  
26 as old as the saying, ‘know your audience.’”).

27 The abstract nature of the patent claims is further confirmed by the fact that a  
28 human could perform the claimed steps mentally or with pen and paper (and, indeed,

1 long has). Imagine a newspaper editor receives a reminder, much like a “feedback  
 2 signal” or “triggering event,” that prompts her to prepare the Weekend edition. She  
 3 composes the Weekend Entertainment section by assembling a layout for the  
 4 newspaper with articles selected from various categories pertinent to the weekend  
 5 (e.g., reviews of newly released movies). In the layout she includes placeholder  
 6 blocks, much like “meta tags,” that specify where relevant advertisements (e.g., a  
 7 special offer at a restaurant or theater) will be inserted. These placeholder blocks  
 8 indicate, for example, the size of the advertisement to be inserted or whether it should  
 9 be printed in color rather than black-and-white, akin to the claimed “display  
 10 requirements.”

11 Twitter recognizes that the Court, in declining to invalidate the Advertising  
 12 Patents in *Facebook/Snap*, found the claims akin to the claims upheld in *Core*  
 13 *Wireless*. However, the Federal Circuit recently confirmed that the *Core Wireless*  
 14 claims were upheld as claims that “improve the functioning of the computer, make it  
 15 operate more efficiently, or solve any technological problem.” *Trading Techs.*, 921  
 16 F.3d at 1093. Thus, *Core Wireless* is inapposite here, where the Advertising Patents  
 17 do not claim to “improve the functioning of [a server], make it operate more  
 18 efficiently, or solve any technological problem.” *Id.*

### 19 **B. The Advertising Patent Claims Add No Inventive Concept**

20 The claims of the Advertising Patents do not supply an inventive concept  
 21 because they do no more than employ generic computer components to perform  
 22 generic computer functions, such as gathering, storing, selecting, assembling, and  
 23 transmitting information. Importantly, the claim construction proceedings in  
 24 *Facebook/Snap* have voided BlackBerry’s prior eligibility arguments to this Court.  
 25 In light of these new developments, Twitter respectfully submits that this Court should  
 26 reject BlackBerry’s previous arguments that the claimed servers add “significantly  
 27 more” by (1) “organizing data into memory location channels,” (2) “transmitting  
 28 specific data based on a triggering event,” and (3) “adding a meta tag to the data for

1 transmission.” *Facebook/Snap*, 2018 WL 4847053 at \*8.

2 First, contrary to BlackBerry’s earlier contentions, there is nothing  
3 unconventional about the servers organizing advertising information into a “plurality  
4 of memory location channels” based on pre-defined categories. As BlackBerry has  
5 since admitted, a “memory location channel” (or “channel”) is just a “memory  
6 location.” *BlackBerry Ltd. v. Facebook, Inc.*, No. 2:18-cv-01844-GW-KS (C.D. Cal.  
7 Apr. 5, 2019), ECF No. 157, at 9 (“*Facebook/Snap* Claim Construction”). Thus this  
8 claimed function merely refers to sorting and storing advertising information by  
9 category. This is, at its core, an abstract idea and not an inventive concept. *See, e.g.,*  
10 *Elec. Power*, 830 F.3d at 1354 (collecting and analyzing information is abstract).

11 Second, given that “memory location channel” simply refers to a location for  
12 storing data, this Court should also reject BlackBerry’s prior argument that there is  
13 something inventive about transmitting specific data selected from a “memory  
14 location channel” based on a feedback signal or triggering event. *Facebook/Snap*,  
15 2018 WL 4847053, at \*6. As discussed above, courts have repeatedly recognized that  
16 tailoring content is a long-prevalent fundamental practice. Furthermore, “[s]electing  
17 particular data to send to a mobile device based on an event or signal,”  
18 *Facebook/Snap*, 2018 WL 4847053 at \*7 n.6, is part of the abstract idea here—indeed,  
19 the very essence of targeted advertising—and therefore cannot supply the inventive  
20 concept as a matter of law. *See BSG*, 899 F.3d at 1291. The additional fact that the  
21 tailored content was selected from a memory location is hardly transformative.

22 Third, the use of the claimed “meta tag” does not provide an inventive concept  
23 for the ’929 Patent either. As the Court rightly recognized during the claim  
24 construction proceedings, the “meta tag” identifies an advertisement and its display  
25 requirements, and is inserted into and transmitted with the content information.  
26 *Facebook/Snap* Claim Construction at 13–17. But those acts are all generic  
27 functionalities of data organization that cannot confer patent-eligibility.

28 Using a meta tag to identify where to display advertising is not inventive. Here,

1 the meta tag functions as a “reference value” that refers to the advertisement, ’929  
 2 Patent at 12:11–14, and such a function is conventional. *See, e.g., Essociate, Inc. v.*  
 3 *Clickbooth.com, LLC*, No. 13-cv-01886-JVS(DFMx), 2015 WL 1428919, at \*8 (C.D.  
 4 Cal. Feb. 11, 2015) (“assigning of unique identification codes . . . describe[s] routine,  
 5 conventional activity”). Indeed, the specification discloses that meta tags “indicate  
 6 when advertising should be inserted” without mentioning any associated technical  
 7 challenges or improvements. ’929 Patent at 8:33–35; *ChargePoint*, 920 F.3d at 768.

8 That the meta tag, instead of the advertisement itself, is inserted into and  
 9 transmitted with content information is also not inventive. This is part of the abstract  
 10 idea itself—specifically, here, the act of **assembling** targeted advertising. *See BSG*,  
 11 899 F.3d at 1290 (“a claimed invention’s use of the ineligible concept to which it is  
 12 directed cannot supply the inventive concept”). The specification concedes that “[t]he  
 13 insertion of meta tags is performed” using “standard techniques.” ’929 Patent at 12:2–  
 14 11.

15 In sum, even though the Advertising Patents use seemingly technical phrases,  
 16 such as “proxy content server,” “memory location channel,” and “meta tag,” these  
 17 terms simply refer to commonplace computer components—a server, a storage  
 18 location, and an identifier. *Smart Sys. Innovations, LLC v. Chicago Transit Auth.*,  
 19 873 F.3d 1364, 1371–72 (Fed. Cir. 2017) (finding claims directed to the abstract idea  
 20 of “collection, storage, and recognition of data” despite the claims’ use of the  
 21 “typically obtuse syntax of patents” and “technical jargon” such as “identifying  
 22 token” and “timepass record”). None of the claim elements here, either alone or in  
 23 combination, provides an inventive concept beyond the abstract idea of assembling  
 24 targeted advertising.

## 25 **VI. The ’120 Patent**

26 As this Court previously described, the ’120 Patent relates to a method for  
 27 “silencing messages in a thread if they have been flagged as silenced and reciting how  
 28 those messages are displayed in the inbox.” *Facebook/Snap*, 2018 WL 4847053 at



1 \*14. Put another way, the patent relates to a method for announcing and presenting  
 2 new messages (such as with a notification alert or through a different visual  
 3 presentation) according to whether the message is part of a silenced message thread.  
 4 BlackBerry specifically asserts Claims 1, 13, and 24. Compl. ¶ 99. Claim 13, which  
 5 is a method claim that recites the acts of the claimed apparatuses of Claims 1 and 24,  
 6 is representative. It is reproduced below with key portions bolded:

7 13. A method for silencing notifications for incoming electronic  
 8 messages to a communication system, the communication system  
 9 comprising a data processor, media readable by the data processor  
 10 and a communications subsystem, the communications subsystem  
 11 adapted to receive the incoming electronic messages, the method  
 12 comprising:

13 receiving one or more selected message threads for silencing;

14 in response to receiving the one or more selected message threads,  
 15 **activating one or more flags**, each flag in association with a selected  
 16 message thread of the one or more selected message threads, **wherein**  
 17 **the one or more flags indicate that the associated one or more**  
 18 **selected message threads have been silenced**;

19 receiving a new incoming electronic message;

20 **identifying the new incoming message as associated with the selected**  
 21 **one or more message threads**;

22 **determining that a message thread associated with the new incoming**  
 23 **message has been flagged as silenced** using the one or more flags;

24 **overriding at least one currently-enabled notification setting** to  
 25 prevent a notification pertaining to receipt of the new incoming  
 26 message from being activated; and

27 **displaying the new incoming electronic message in an inbox** together  
 28 with any message thread not flagged as silenced, while **silencing any**  
**further notifications** pertaining to receipt of the new incoming  
 electronic message;

wherein **the new incoming message thread flagged as silenced is**  
**displayed in the inbox in a different manner** than any message  
 thread not flagged as silenced.

Fig. 6 illustrates the decision tree of the claimed method. A new message is received (602), then sorted into a new or existing thread (604, 610), and based on whether that thread has been marked for silencing (612), the new message is either presented with no notification but grayed out (614) or presented with a notification and displayed like other messages in the inbox (616).

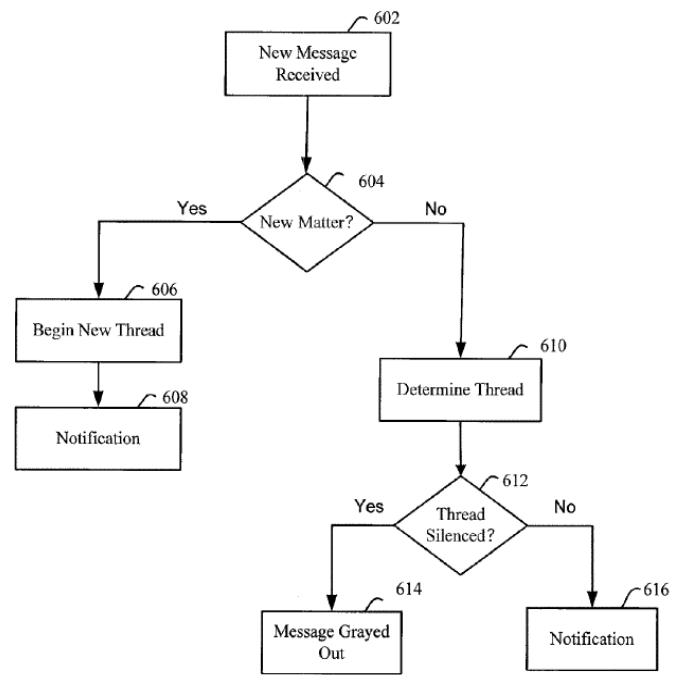


FIG. 6

As the specification

concedes, email applications such as Microsoft Outlook and other messaging applications were standard and well-known. '120 Patent at 8:39–44. These applications commonly organize messages into groups or “message threads.” *Id.* at 1:22–28, 11:61–12:1. These groupings can be based on common subject matter or topics of “conversation.” *Id.* at 1:24–28. The specification also notes that messages and message threads can be organized by tagging or marking them with a “flag,” or identifier. *See, e.g., id.* at 8:31–39, 8:39–44, 9:35–38, 11:18–20, 11:43–47, 13:9–12, 13:51–53.

The specification explains that a notification setting for alerting users of a new message can be overridden if the new message is associated with a thread that has been marked for silencing. “[W]hen a user silences a thread, the user will no longer receive notifications (e.g. ring tones, flashing lights or vibrations) when a new message arrives belonging to the silenced message thread.” *Id.* at 13:19–22. These silenced threads are displayed in an inbox, just like all other threads, but in a visually distinct manner. The specification explains that this visual distinction can take any



1 form, including using different colors or fonts. *Id.* at 13:28–37, 16:1–8.

2 **A. The '120 Patent Claims Are Directed to the Abstract Idea of Sorting,**  
 3 **Analyzing, and Presenting New Messages**

4 In its prior analysis, the Court noted that the *Alice* step one inquiry had to take  
 5 into account the claims' recitation of displaying silenced messages in a different  
 6 manner, and of a flag and override system for automatically identifying and silencing  
 7 particular messages. *Facebook/Snap*, 2018 WL 4847053 at \*14. With that in mind,  
 8 Twitter submits that the claims of the '120 Patent are indeed all patent-ineligible.

9 Viewing the claims as a whole, as required, the claims of the '120 Patent are  
 10 drawn to the abstract idea of sorting, analyzing, and presenting new messages. More  
 11 specifically, the claims are directed to sorting new messages into a related group or  
 12 thread, and based on whether the thread has been marked for silencing, presenting the  
 13 new messages in a different manner, both in terms of whether the new message  
 14 triggers a notification and whether the new message is displayed differently from  
 15 other messages. These activities—sorting, marking, using rules, presenting—are all  
 16 fundamental concepts of organizing data, just applied in the context of mail  
 17 management. *See, e.g., Elec. Power*, 830 F.3d at 1354 (holding claims abstract that  
 18 were directed to “gathering and analyzing information of a specified content, then  
 19 displaying the results, and not any particular assertedly inventive technology for  
 20 performing those functions”). *See also Trading Techs.*, 921 F.3d at 1093 (“As a  
 21 general rule, “the collection, organization, and display of two sets of information on  
 22 a generic display device is abstract.”) (internal citations omitted).

23 The *Symantec* case discussed above with respect to the '777 Patent is also  
 24 instructive here. The Federal Circuit affirmed the patent ineligibility of the claims at  
 25 issue for being directed to “receiving, screening, and distributing e-mail.” *Symantec*,  
 26 838 F.3d at 1316–17. The Federal Circuit also noted that corporate mailrooms  
 27 perform those very same functions by applying business rules for taking certain  
 28 actions on correspondence, such as gating a message for further review or just

1 releasing the message. *Id.* at 1317. While the *Symantec* patent purported to address  
 2 the need to “control the flow” of information within an organization, the Federal  
 3 Circuit found that description only further demonstrated that the claimed method was  
 4 abstract. *Id.* at 1317–18. Here, the patent claims are likewise abstract for being  
 5 directed to sorting new messages, applying rules to the messages based on how they  
 6 were sorted, and acting on the messages based on application of those rules.

### 7 **B. The ’120 Patent Claims Add No Inventive Concept**

8 The claims also fail step two of *Alice*. Although the Court previously noted a  
 9 factual dispute as to whether (1) “activating flags for particular message threads,” (2)  
 10 “overriding currently-enabled notification settings,” and (3) “displaying silenced  
 11 messages in a particular manner” are claim elements drawn to well-understood,  
 12 routine, or conventional concepts (*Facebook/Snap*, 2018 WL 4847053, at \*14 n.16),  
 13 further review shows that those elements—individually and in combination—fail to  
 14 transform the abstract nature of the claims into a patent-eligible application.

15 First, the act of setting flags to indicate silenced message threads is both  
 16 conventional and abstract. The specification acknowledges that flags—described  
 17 broadly as data items that can be used to identify, tag, mark, or organize data records  
 18 like messages—were well-known and used by applications such as Microsoft  
 19 Outlook. *Id.* at 8:39–44; *see id.* at 8:31–39, 8:39–44, 9:35–38, 11:18–20, 11:43–47,  
 20 13:9–12, 13:51–53 (describing flags). Nothing in the patent contains any suggestion  
 21 of an unconventional use of flags in order to mark silenced message threads. Indeed,  
 22 the Federal Circuit has held that the use of data markers like tags to collect, identify,  
 23 organize, classify, or otherwise filter data is an abstract idea in and of itself. *See*  
 24 *Intellectual Ventures I LLC v. Erie Indem. Co.*, 850 F.3d 1315, 1327 (Fed. Cir. 2017);  
 25 *Symantec*, 838 F.3d at 1313–14 (using email identifiers is abstract). Therefore, using  
 26 flags cannot be an inventive concept.

27 Second, the act of overriding notifications for particular messages is also both  
 28 conventional and abstract. The patent specification teaches that notifications can be

1 overridden by simply employing generic computers components and capabilities—  
2 implemented with “software modules 306 resident in memory 300” and executed by  
3 a microprocessor, *i.e.*, software programming running on a generic computer. *See*  
4 ’120 Patent at 9:32–67. The specification does not otherwise disclose any specific  
5 programming details or any technological difficulty in implementing the overriding  
6 step, which is to be expected. Overruling one rule in favor of another rule is hardly a  
7 technological feature. It is no different from asking an assistant to alert you about all  
8 incoming phone calls, but not if the caller is a telemarketer. Thus, this “additional  
9 step[] amount[s] to a basic logic determination of what to do given a user’s  
10 preferences,” which the Federal Circuit has said is insufficient to transform an abstract  
11 idea into patent-eligible subject matter. *Return Mail, Inc. v. USPS*, 868 F.3d 1350,  
12 1369 (Fed. Cir. 2017).

13 Third, displaying messages in a particular manner is plainly conventional and  
14 abstract. The Federal Circuit has reiterated time and time again, including as recently  
15 as a few months ago, that displaying information is an abstract concept, even as a new  
16 arrangement of information that assists users in processing information. *Trading*  
17 *Techs.*, 921 F.3d at 1093–94. It is a fundamental aspect of using information and  
18 computer technology. Although the claims provide additional specificity that the  
19 messages are displayed in an inbox with other messages, and that the messages are  
20 displayed in a distinct manner from other messages, there is nothing unconventional  
21 about these extra details. Consistent with this, the ’120 Patent only identifies the use  
22 of “typical” and generic graphic user interfaces to enact these different modes of  
23 display. *See, e.g.*, ’120 Patent at 10:47–60, 10:57–63 (noting computers typically can  
24 display shaded and highlighted objects); *id.* at 11:11–13 (using “suitably-configured  
25 GUIs” for displaying silenced message threads); *id.* at 13:28–37, 16:1–8 (displaying  
26 a silenced message threads differently by simply greying (shading) them out).

27 BlackBerry alleges no other facts in its complaint to show that the patent claims  
28 are inventive. It makes the bare assertion that the claims are “not conventional, well-

1 understood, or routine” and then simply recites the claim elements. This is an attempt  
2 to disguise attorney argument as factual allegations that the Court is not required to  
3 accept as true. Accordingly, these claims do not present anything “significantly  
4 more” than the abstract idea.

5 **CONCLUSION**

6 For the foregoing reasons, Twitter respectfully submits that BlackBerry’s  
7 First Amended Complaint should be dismissed because all of the specifically  
8 identified asserted claims are invalid under § 101.

9  
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PAUL, WEISS, RIFKIND, WHARTON &  
GARRISON LLP

11  
12 By: /s/ Nicholas Groombridge  
13 Nicholas Groombridge

14 1285 Avenue of the Americas  
15 New York, New York 10019-6064  
16 Telephone: (212) 373-3000  
Facsimile: (212) 757-3990

17 Attorneys for Defendant Twitter, Inc.  
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19  
20  
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23  
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